

Issued December 5, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1166.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF VANILLA EXTRACT.

On January 21, 1910, the United States Attorney for the Southern District of Texas, acting upon a report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of one barrel of vanilla extract in the possession of the Jones & Cogswell Ice Cream Co., Houston, Tex. The barrel containing said product was not labeled, but the product was manufactured and consigned by Warner-Jenkinson Co., St. Louis, Mo., and invoiced as "30 Gallons All Bean Vanilla," and purchased by the consignee under the belief that it was a pure vanilla extract.

Analysis of a sample of said product made by the Bureau of Chemistry of the United States Department of Agriculture showed the addition of commercial vanillin and coumarin, and that it contained but a small quantity, if any, of vanilla extract. The libel alleged, among other things, that the product, after transportation from the State of Missouri into the State of Texas, remained in the original unbroken package, and was misbranded, and therefore liable to condemnation, and confiscable for the following reasons: (1) That the invoice of the said barrel of the said ice cream company represented the liquid in said barrel contained to be "30 gallons all Bean Vanilla," and that its color is such as to give it the appearance of genuine vanilla extract, in violation of section 7 of said act; that the said liquid is not in truth and in fact all bean vanilla extract, but is a product which has been colored and mixed by the addition of artificial coloring matter in a manner whereby inferiority is concealed and in order to imitate genuine vanilla extract, and whereby the said product does imitate and appears to be genuine vanilla extract. (2) That the said barrel is misbranded in violation of the Food and Drug Act of June 30, 1906, in that the said barrel is described in

the invoice aforesaid as "30 gallons all Bean Vanilla," whereas in truth and in fact the contents of said barrel contains a very small per cent of genuine vanilla extract if it contains any per cent whatever of such extract. (3) That said barrel of liquid hereinbefore mentioned and described was sold under such conditions that the consignees were led to believe that it was an all bean vanilla so that the description and representations concerning the same are misleading and false, so as to deceive and mislead the purchaser as to the character and quality of the contents of said barrel, branded, described, and represented as aforesaid is a deceit and a misbranding within the meaning of the act aforesaid. (4) That the branding, description, and representations concerning said liquid is further misleading and deceptive, and is a misbranding within the meaning and in violation of the said Food and Drugs Act approved June 30, 1906, in that the said barrel does not contain a liquid which may be truthfully called "All Bean Vanilla," but contains merely a neutral spirit colored and flavored by the addition of artificial matter, to wit, commercial vanilla and coumarin, so as to produce the color and approximate the taste of genuine vanilla extract, and in truth and in fact contains but a small per cent of the genuine extract of vanilla, if any quantity or proportion of extract of vanilla whatever. On March 26, 1910, Warner-Jenkinson Co. appeared by counsel as claimant of said product, and filed exceptions to the libel, which exceptions were, on the same day, amended by claimant by leave of court first obtained, whereupon the court, after argument and due consideration, overruled the exceptions and amended exceptions.

On March 30, 1911, the cause coming on for hearing, the court entered final judgment, holding the product to be misbranded as alleged in the libel, and condemning and forfeiting it to the United States, and ordering the marshal to dispose of it by sale under such terms and conditions as are not in violation of law. From this judgment claimants sued out a writ of error to the United States Circuit Court of Appeals for the Fifth Circuit. The case was thereafter heard by said court, which affirmed the judgment of the lower court, as follows: "In the opinion of a majority of the judges there is no reversible error shown by the record. The judgment of the District Court is, therefore, affirmed."

W. M. HAYS,

Acting Secretary of Agriculture.

WASHINGTON, D. C., *October 10, 1911.*